



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL FFL CNR FFT

Introduction

This hearing dealt with applications from both the landlord and tenants pursuant to the *Residential Tenancy Act* (the “*Act*”).

The landlord applied for:

- A monetary award for unpaid rent pursuant to section 67; and
- Authorization to recover the filing fee from the tenants pursuant to section 72.

The tenants applied for:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent pursuant to section 46; and
- Authorization to recover the filing fees from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

As both parties were present service was confirmed. The parties each testified that they were in receipt of the respective materials. Based on the testimonies I find each party was served with the materials in accordance with sections 88 and 89 of the *Act*.

At the outset of the hearing, the landlord requested to amend the monetary amount of their claim. The landlord indicated that since the application was filed additional rent has come due and owing. The landlord seeks a monetary award of \$14,600.00. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure, as additional rent coming due is reasonably foreseeable, I amend the landlord’s Application to increase the landlords’ monetary claim to \$14,600.00.

Issue(s) to be Decided

Should the 10 Day Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award as claimed?

Is either party entitled to recover the filing fee from the other?

Background and Evidence

The current monthly rent for this periodic tenancy is \$5,200.00 payable on the first of each month.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent which the landlord testified was subsequently cancelled as the tenant made full payment of the arrears at that time.

The landlord testified that since the cancellation of the 10 Day Notice the tenant has failed to pay full rent for the months of April and May 2020 and has indicated their unwillingness to pay any rent for June 2020. The parties gave evidence that the tenant has made a payment of \$1,000.00 in April and no subsequent payment was made. The landlord seeks a monetary award in the amount of \$14,600.00 the expected rental arrear as of June 1, 2020.

The tenant did not dispute that they have failed to pay full rent for the months listed by the landlord. The tenant sought an order pursuant to Residential Tenancy Rule of Procedure 2.11 that, as the landlord's monetary claim is unrelated to the tenant's claim to cancel a 10 Day Notice, the landlord's application be dismissed. The tenant confirmed that they are aware of the details of the landlord's claim and did not indicate that there was any prejudice in proceeding. The tenant did not seek that the landlord's application be severed and adjourned at a different date but stated unequivocally that they seek to have the landlord's application dismissed in its entirety as they believe that having it scheduled to be heard at the same time as their own application is contrary to the Rule of Procedure.

Analysis

As the parties agreed that the 10 Day Notice has been cancelled prior to the hearing and is of no further force or effect I find that there is no need to make a finding on the

tenant's application. The tenant's application is dismissed in its entirety without leave to reapply.

The tenant disputes that the landlord be permitted to file their application seeking a monetary award and that it should not be heard at the same time as the tenant's application. I find the tenant's submissions to be patently unreasonable and contrary to the principles of providing a fair, efficient and consistent resolution of disputes.

It is unclear if the landlord's application was filed as a cross-application in response to the tenant's existing application or if it was simply scheduled by the Branch to be heard by a single arbitrator at the same time as the tenant's application. It makes no difference in my determination.

The principles to be considered in joining applications so that they may be heard at the same hearing are outlined in Rule of Procedure 2.10. In the present matter it is evident that the applications pertain to the same residential property and tenancy and involve the same parties. The issues arise from the tenant's non-payment of rent. While the exact months when rent has not been paid may be different in each of the applications, I find that similar facts would be considered, and similar findings be made for each of the applications. Furthermore, the parties have confirmed that they have been served with the respective materials, are aware of the details of the applications and neither party suggested that there would be any prejudice to proceed with a hearing of both matters.

The tenant has not suggested that they would suffer any prejudice to proceed with the landlord's application nor have they indicated that they are unprepared. The tenant simply suggests that the landlord ought not to have been able to file their application and that the landlord's application be dismissed in its entirety. I do not find there to be any merit in the tenant's submissions on this point. I find that there is no prejudice to either party or infringement of the principles of procedural fairness and natural justice to consider both applications at this hearing.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I accept the evidence of the parties that the monthly rent for this tenancy is \$5,200.00 payable on the first of each month. I accept the evidence of the parties that the tenant has made one payment of \$1,000.00 towards April rent but has failed to pay the balance of the rent for April and May, 2020.

Under these circumstances I find that the landlord has established on a balance of probabilities monetary loss of \$9,400.00, the equivalent of unpaid rent for April and May, 2020 and issue a monetary award in the landlord's favour in that amount.

While the landlord suggests that rent for June 2020 will be payable in a matter of days, I find that this amount has not come due yet and a monetary award for unpaid rent for June is premature. While I find that based on the evidence, including the tenant's testimony, conduct and written correspondence that it is likely that the tenant may continue to fail paying monthly rent, I find that a monetary award for rent that is not yet owing is inappropriate.

The landlord is at liberty to reapply for additional monetary awards when they have incurred actual losses.

As the landlord was successful in their application they are also entitled to recover their filing fee from the tenant.

Conclusion

The tenant's application is dismissed without leave to reapply.

I issue a monetary order in the landlord's favour in the amount of \$9,500.00. The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 29, 2020

Residential Tenancy Branch